



San Diego City Attorney MICHAEL J. AGUIRRE

NEWS RELEASE

FOR IMMEDIATE RELEASE: April 23, 2008

Contact: Communications Division (619) 235-5725

CITY ATTORNEY WILL NOT SIGN-OFF ON BOND OFFERING, OPINES THAT PUBLIC VOTE NEEDED FOR DEFERRED MAINTENANCE FINANCING

STATEMENT BY MICHAEL AGUIRRE

At the behest of San Diego Mayor Jerry Sanders, the San Diego City Council yesterday approved by a 7-1 vote a financing scheme to borrow \$108 million dollars for deferred maintenance needs of the City of San Diego. The proposed financing was over my objection.

The heart of my objection is that the proposed financing mechanism violates the debt limit provisions of the City Charter and State Constitution. I also provided a legal opinion to the Mayor and City Council to that effect.

The debt limit provisions are designed to prevent local governments from accumulating ever-increasing amounts of indebtedness without the consent of those that will have to repay the debt. In effect, these provisions require that the City operate on a pay-as-you-go basis, absent a waiver approved by a two-thirds vote of the electorate. The Mayor's proposal seeks to borrow \$108 million repayable from future taxes—in other words, money that is not currently in the hands of the City today---without a vote of the public.

Furthermore, the proposed financing requires that taxpayers put at risk some of its most valuable assets—our San Diego Police Department's headquarters and neighborhood libraries—in order to secure the financing; yet none of these pledged properties will receive the bulk of the bond proceeds for improvements.

(MORE)

Recent City Attorney media releases can be accessed on the San Diego City Attorney's home page located on the Internet at
<http://www.sandiegocityattorney.org>

1200 Third Avenue, Suite 1620, San Diego, California 92101-4188 (619) 236-6220

Under California Constitution, Article XVI § 18 and City Charter, Article VII, § 99, City officials cannot borrow from future year revenues to pay bills from earlier years without a vote of the people. The Constitution and City Charter provide in pertinent part:

No... City...***shall incur any indebtedness or liability in any manner*** or for any purpose ***exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public*** entity voting at an election to be held for that purpose.... Cal. Const., Art. XVI, § 18(a).

The City ***shall not incur any indebtedness or liability in any manner*** or for any purpose ***exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent*** as then required by the Constitution of the State of California.... San Diego City Charter, Article VII, § 99.

My principal concern is that there exists no legal case on point that provides authority for the financing. Also, I specifically informed the Mayor's Chief Operating Officer, Jay Goldstone, that I would not support the bond offering absent such California case law.

It is for that reason that the City Attorney's Office will not sign-off on the bond offering proposed by the Mayor and approved by the City Council.

But more than this, the Mayor has at his disposal a valid and transparent vehicle for financing the City's deferred maintenance infrastructure needs. It's called a general obligation bond. The Mayor simply has to show strong leadership, the leadership he has pledged to the voters. If the Mayor believes that the deferred maintenance needs of the City are critical, then he should by all rights go to the voters and make the case. However what the Mayor proposes is to borrow money by use of a vehicle that is by all accounts designed to avoid the consent of those who have to repay the debt. Thus the Mayor proposes to repeat the errors of the past with respect to the City's \$2 billion pension and health care debt: borrowing money today without any viable means to repay the debt. What the City needs today is courageous leadership. The Mayor can do better.

Michael Aguirre
San Diego City Attorney

###